

THE LECTURE-IN-DISGUISE

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In the faculty lounge, two professors (*P1* and *P2*) had the following discussion:

P1: How did your classes go last semester?

P2: Pretty good. I think that I did well enough, but I would like to be even more effective.

P1: Can you be more specific?

P2: Sure. As you know, I teach several classes that are referred to as clinical classes. These classes involve professional skills like interviewing, negotiation, and trial advocacy. But no matter how I teach these classes, by lecture, assigned readings, simulations, or class discussions, the students just never seem to have a sense of how lawyers perform these skills. At least they don't pick up the ideas very quickly.

P1: Why don't you give your students a Lecture-In-Disguise?

P2: What's that?

P1: The Lecture-In-Disguise is used at the University of Hawaii Law School. It is a teaching method which uses a simulation by the professors to present class material to the students.

P2: Is it different from a regular lecture?

P1: Definitely. The Lecture-In-Disguise is not a lecture like the traditional monologue, nor is it a socratic dialogue. For purposes of the Lecture-In-Disguise, the "lecture" is the subject matter being taught, which could be a lawyering skill such as interviewing, counseling, or witness examination, or it could be a topic such as fact investigation or court procedures.

P2: Then what is the simulation you mentioned?

P1: The simulation is a demonstration of a lawyering skill performed by the professors.

P2: What types of demonstrations do you do in the Lecture-In-Disguise?

P1: The easiest demonstration is the witness examination, but counseling, interviewing, negotiating, and other skills also can be used.

P2: What's the disguise you talked about?

P1: It's called a "disguise" because the content of the lecture is somewhat disguised by the demonstration of the lawyering skill.

P2: Which are you teaching, the subject matter or the lawyering skill?

P1: Actually both. In fact, strategy, demeanor, and professional responsibility also are being taught simultaneously.

P2: Simultaneously? It sounds a bit strange to me. Does anyone else in legal education use this teaching technique?

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- P1: Not many people so far. But after seeing demonstrations¹ of the Lecture-In-Disguise, some other clinical professors are beginning to use it.
- P2: I'd like to hear more about this Lecture-In-Disguise.
- P1: Well, you have two choices. You can either continue to read this article or go visit the law school at the University of Hawaii in Honolulu.

I. INTRODUCTION

The Lecture-In-Disguise is a team-teaching technique which uses a simulation by the professors to present the class material to the students. The simulation is used in lieu of a more traditional classroom discussion. The form of the simulation can vary from a simple conversation between the professors to a cross examination. The Lecture-In-Disguise can be thought of as a skit² performed by the professors for the students. Like many skits, the Lecture-In-Disguise can be very entertaining, but of course, an entertaining class is not necessarily synonymous with an effective class.

The Lecture-In-Disguise, however, is a powerful teaching technique which professors should consider adding to their repertoire. It creates a good learning atmosphere, presents material on several different levels, and uses practical aspects of "observational learning theory." In its most complex form, the Lecture-In-Disguise can simultaneously 1) teach a specific subject matter—the "lecture"; 2) present a demonstration of a professional skill—the "disguise"; and 3) offer examples of strategy implementation, appropriate demeanor, and professional responsibility.

This article will describe the Lecture-In-Disguise and present suggestions about how to use it. The appendix contains an example of a Lecture-In-Disguise used for the first day of class. Because the methodology was created to be used for team-teaching in clinical courses, this article will focus on its use in teaching lawyering skills. However, the technique is not restricted to clinical education. I have used the Lecture-In-Disguise in traditional,³ non-clinical courses.⁴ Many professors probably have used a simple form of Lecture-In-Disguise if they ever have team-taught a course.⁵ Furthermore, the technique even can be used by a single professor.

1. Jim Countiss, my former colleague, and I demonstrated the Lecture-In-Disguise at the 1982 Association of American Law Schools' Clinical Teachers Workshop, on June 23, 1982, in Minneapolis, Minnesota; the Third Annual California Clinical Consortium, on October 23, 1982, in San Diego, California; and the 1984 Annual Meeting of the Association of American Law Schools, Clinical Legal Education Section Meeting, on January 5, 1984, in San Francisco, California.

2. The presentation in the classroom is critical to the learning. Improving classroom teaching may require operating under "the premise that college classrooms are dramatic arenas first and intellectual arenas second." J. LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING* 72 (1984).

3. "What is the 'traditional method' of legal teaching, as the term is used in this symposium? The answer should be simple and not surprising. It concerns the use of the case method by means of Socratic discourse." Wade, *Some Observations on the Present State of Law Teaching and the Student Response*, 35 *MERCER L. REV.* 753, 760 (1984).

4. I have used the Lecture-In-Disguise when teaching evidence, criminal procedure, and legal writing.

5. When professors team-teach a course, they often stage a mock debate, which is a simple form of a Lecture-In-Disguise. For example, at the Yale Law School, Robert Bork taught a class with a technique that resembled a Lecture-In-Disguise. "Bickel dropped in on Bork one day, and the two held an impromptu debate in front of a vastly amused class. That led to perhaps the most popular offering at Yale in the 1960's, a constitutional-theory seminar that the two men jointly taught in good-natured combative fashion." *A Long and Winding Odyssey*, 130 *TIME*, September 21, 1987, at 17.

Even if professors do not use this technique in the classroom, it is frequently employed in innovative

Before proceeding with a detailed description of the Lecture-In-Disguise, I would like to place it in perspective. The Lecture-In-Disguise is only a teaching technique. I use it about two to four times a semester. It is not an overall teaching strategy or philosophy.

II. THE LECTURE COMPONENT

The Lecture-In-Disguise can be best understood by examining two of its parts: 1) the lecture topic or subject matter, and 2) the simulation or disguise. In the Lecture-In-Disguise, the word "lecture" refers to the particular lecture topic or subject matter for the class and does not refer to the method of presentation. "Lecture" is used here as a noun,⁶ not a verb.⁷ The lecture topic can be any subject matter that a professor wants to discuss in class. There is nothing novel about the subject matter used with the Lecture-In-Disguise. I have used the following topics: 1) an overview of the course; 2) court procedures; 3) small, discrete micro-skills⁸ such as active listening or representational systems;⁹ 4) a lawyering skill such as interviewing, counseling, negotiation, or witness examination; and 5) general areas such as professional responsibility.

The simplest form of Lecture-In-Disguise is a conversation between the professors. In that situation, the content of the lecture is of primary importance. For example, the professors could have a conversation about how to conduct an interview. The lecture about interviewing is embedded¹⁰ in the conversation and would be the most important part of this Lecture-In-Disguise simulation. The lecture, however, does not have to be about a lawyering skill. Although in clinical courses the subject matter is often a skill, any relevant subject matter can be the lecture topic.

III. DESCRIPTION OF THE LECTURE-IN-DISGUISE

A. The Disguise Component

The unique aspect of the Lecture-In-Disguise is not the lecture, but the disguise or simulation performed by the professors. In other law school uses of simula-

law review articles. For example, Stickgold, *Nineteen Eighty: Being an Interview with William O. Douglas Shortly after His Death Together with a Brief Remembrance of His Life*, 10 GOLDEN GATE L. REV. 535 (1980); Friedland, *The Use of Appellate Case Report Analysis in Modern Legal Education: How Much Is Too Much?*, 10 NOVA L.J. 495 (1986); Khosia & Williams, *Economics of Mind: A Collaborative Reflection*, 10 NOVA L.J. 619 (1986).

6. There is no need to discuss the various forms of lecture which range between the monologue for undergraduate teaching and the Socratic dialogue for law school teaching.

7. The verb "lecture" is derived from the word "lector," who was a reader of lessons in religion and theology in the Middle Ages. S. ERICKSEN, *THE ESSENCE OF GOOD TEACHING* 28 (1984).

8. A microskill is a single, discrete skill that can be studied and practiced by itself. A. Ivey, *Micro-counseling* (1978). For a description of "micro" aspects of lawyering, see Menkel-Meadow, *The Legacy of Clinical Legal Education: Theories about Lawyering*, 29 CLEV. ST. L. REV. 555 (1980).

9. For a discussion of representational systems, see Barkai, *Sensory Based Language in Legal Communication*, PRAC. LAW., Jan. 1981, at 41; Barkai, *A New Model for Legal Communication: Sensory Experience and Representational Systems*, 29 CLEV. ST. L. REV. 575 (1980).

10. More about embedded messages can be found in S. LANKTON & C. LANKTON, *THE ANSWER WITHIN: A CLINICAL FRAMEWORK OF ERICKSONIAN HYPNOTHERAPY* 112-20 (1983) (the embedded message in hypnotic trance induction); J. RICHARDSON & J. MARGULIS, *THE MAGIC OF RAPPORT* 123-27 (1981) (the embedded message in sales and personal communication).

tions, the students, not the faculty, role play the simulation.¹¹ In the Lecture-In-Disguise, however, the professors do the role playing. Although it could be said that the professors are in disguise, it is really the subject matter of the lecture which is in disguise.

The disguise for the Lecture-In-Disguise can take many forms. The one common theme is that the professors take on some role other than that of professors in a law school class. The two general categories of disguises are: 1) normal dialogues, and 2) lawyering skills. In the simplest form of the normal-dialogue disguise, the professors have a conversation and pretend that there is no audience of students. For example, one professor tells the other about local court procedures. Of course, the intent of the simulation is to inform the students, not the other professor, about the court procedures.

In addition to informal conversations, the Lecture-In-Disguise easily can be structured as a disagreement or debate between the professors. In fact, this technique is commonly employed by professors who team-teach traditional classes. Each professor takes on a role with a different point of view, and each speaks as if they represent that point of view. For example,

P1: I have a new client coming in for an interview in half an hour. I have to be sharp so as to be able to establish control from the outset.¹²

P2: We have never talked too much about this, but my philosophy of interviewing and counseling is to share the control with the client. It's the client's case, so I believe that the client should be in charge of the case.¹³ Why do you want control?

The discussion continues.¹⁴

11. Ever since the case method was first used in legal education, professors have used a minor form of simulation, usually limited to asking a student to give the argument of one of the lawyers.

For example, "On opening day of the fall term in 1870 at Harvard Law School it is late morning and . . . Dean Christopher Langdell presides from an upraised desk at the front of the hall . . . Langdell again: 'Mr. Rawle, will you give the plaintiff's argument?'" Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329 (1979).

The students were challenged to play the role of practicing lawyers. They were to interview Dean Mentschikoff, who played their client. . . .

SM: If you were the lawyer for the seller, could you say the opposite?

Steinberg: If I were the lawyer for the seller I'd stress this point. If I were your lawyer I'd try to find something else to help you.

Kelso, *In Quest of a Theory for Lawyering: Some Hypotheses and a Tribute to Dean Soia Mentschikoff*, 29 U. MIAMI L. REV. 159, 177, 192 (1975).

Professors in such non-clinical classes, however, have begun to make more extensive use of simulations. Almost every issue of the *Journal of Legal Education* has at least one article about these simulations. On the other hand, professors in clinical classes use the simulation method extensively by asking the students to simulate complete lawyering skills, such as interviewing, counseling, negotiation, or any part of a trial.

12. This view of interviewing and counseling reflects the traditional view that the lawyer should assume broad control over the problem. See D. ROSENTHAL, *LAWYER AND CLIENT: WHO'S IN CHARGE?* 7 (1974).

13. This view generally supports the client-centered approach of interviewing and counseling used in psychotherapy by Carl Rogers. C. ROGERS, *CLIENT-CENTERED THERAPY* (1951). The client-centered approach is often taught in law schools using D. BINDER & S. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

14. Typically my Lectures-In-Disguise last five to fifteen minutes. Although the students are not actively participating in the Lecture-In-Disguise and are not expecting to be called on, they are very attentive to this novel form of presentation. Attention can be increased by using the same techniques that professors normally use in class, such as walking to different parts of the room and using visual aids.

B. Using Complex Disguises

The form of the verbal exchange between the professors is not limited to just conversations or debates. An interview, a counseling session, a negotiation, or a witness examination also can be used as the simulation. In fact, the type of simulation performed is limited only by the creativeness of the professors. When simulating a lawyering skill, the skill itself is one of the things being taught. When the disguise is a skill, the Lecture-In-Disguise offers greater complexity in the material presented by adding another level for learning. Not only is the subject matter (or content) of the lecture being taught, but the form of the simulation (or process¹⁵) also is being taught.

Rather than teach and demonstrate a complete, complex, multi-stage lawyering skill such as interviewing or counseling, only a part of the lawyering skill can be demonstrated.¹⁶ For example, the Lecture-In-Disguise could focus only on active listening. Because most law students have not used active listening before, a short demonstration of the skill could be very useful.¹⁷ In fact, Lectures-In-Disguises probably are the most valuable when they demonstrate a skill which is new to the students. The Lecture-In-Disguise demonstration provides a concrete example rather than an abstract discussion.¹⁸

One of my favorite Lectures-In-Disguise is about active listening. The simulation begins with one professor expressing a reluctance to teach active listening. During the mock disagreement, the two professors discuss the advantages and disadvantages of using active listening in law practice. The students hear the arguments for and against active listening, and at the same time, the professors give a demonstration of active listening. This Lecture-In-Disguise teaches on two levels because it offers arguments about active listening (the content), and also presents a demonstration of the skill (a process). During the demonstration, one professor counsels the other professor about reluctance to use active listening, by using the skill of active listening. This technique gives the professors an opportunity to practice what they teach. For example:

P1: I'm uneasy about our class scheduled on active listening next week. I'm not sure that lawyers should use that counseling skill in law practice.

15. In the field of law, reference is often made to the dichotomy between theory and practice. In other disciplines, the dichotomy between content and process serves as a reference point. J. PARKER, *PROCESS AS CONTENT: CURRICULUM DESIGN AND THE APPLICATION OF KNOWLEDGE* (1966); D. FULLER, *COUNSELING: CONTENT AND PROCESS* (1964).

16. In other disciplines that teach interviewing and counseling, single discrete aspects of the skills are often taught separately. See, D. HAMMOND, D. HEPWORTH & V. SMITH, *IMPROVING THERAPEUTIC COMMUNICATION* (1977); A. IVEY, *MICROCOUNSELING* (1978).

17. Many of the most useful texts for teaching lawyering skills include transcripts of the skills. For example, BINDER & PRICE, *supra* note 13, and T. MAUET, *FUNDAMENTALS OF TRIAL TECHNIQUES* (1980).

18. Robert C. Wilson, at the University of California, Berkeley, has written a monograph about teaching improvement. All ideas were drawn from interviewing outstanding Berkeley professors about what they do that they think make their teaching highly rated by students. One such idea from those materials applies here. "Demonstrate a concept rather than simply describing it." R. Wilson, *Explaining Clearly*, THE LIBRARY OF TEACHING IMPROVEMENT PACKETS (TIPS) FOR PREPARING PERSONAL TEACHING IMPROVEMENT GUIDES Teaching Improvement Packets No. 4, at 4, (1986), adapted from B. DAVIS, L. WOOD & R. WILSON, *ABC'S OF TEACHING WITH EXCELLENCE* (1983).

P2: What I hear you saying is¹⁹ that you are reluctant to teach the active listening class because you are not sure that active listening is an appropriate lawyering skill.²⁰ [P2 active listens P1]

P1: That's right. It's often difficult for me to teach something I don't fully believe in.²¹

The discussion continues.

C. *Mixing Skills in the Lecture and the Disguise*

In the previous active listening example, the lecture was about active listening and the simulation used as a disguise was also active listening. The lecture and the disguise, however, do not have to be about the same skill. The skills can be mixed. For example, witness examination can be used to discuss interviewing; a counseling simulation can be used to discuss negotiations. Although mixing the skills does complicate the skit, it does not seem to hinder the students' learning. Because mixing the skills makes a challenging class for both students and professors, attention and enthusiasm remain at a high level.

D. *A Third Level of Strategy, Demeanor, and Professional Responsibility*

The subject matter content and the demonstration of a lawyering skill are the two most obvious levels in the Lecture-In-Disguise. However, the Lecture-In-Disguise also can teach at a third level—a level which encompasses strategy, demeanor, and professional responsibility. Although law professors already discuss these topics in their classes, discussions alone are not enough.

Most of what lawyers know about strategy implementation, appropriate demeanor, and professional responsibility is acquired in law practice, not law school. Some of this material is hard to describe in words. And yet that is exactly the point. Words alone cannot fully describe many aspects of competent lawyering. When words cannot describe it, classroom discussions cannot teach it. Future lawyers need to learn how to play their professional roles, and one of the best methods of learning how to practice law is to watch other people practicing law. The models of competent performance that students see in school,

19. The introductory phrase, "What I hear you saying is . . .," is a suggested prefix for active listening responses. D. HAMMOND, D. HEPWORTH & V. SMITH, *IMPROVING THERAPEUTIC COMMUNICATION* 115 (1978). In my opinion, the use of such a boilerplate introductory phrase dooms students to fail when they first attempt active listening. Most students try to use active listening for the first time with their friends. Because their friends already know their normal speech patterns, when the students say "What I hear you saying is . . .," the friends usually say "Why are you talking like that?" Not using an introductory phrase greatly improves the chance of practicing active listening without being detected. Barkai, *Active Listening*, TRIAL, Aug. 1984 at 66, 68.

20. Professor 2 active listens Professor 1 both on the feeling level, by reflecting back the feeling of reluctance, and on the content level, by reflecting back the inappropriateness for practice concern. For more about teaching the skill of active listening, see, Barkai, *How to Develop the Skill of Active Listening*, PRAC. LAW., June 1984, at 73; Barkai & Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U. L. REV. 505 (1983).

21. This debate also could be used to discuss an issue of professional conduct. P1 has expressed a reluctance to teach something she does not fully believe in. This could be the starting point for a discussion of how lawyers can represent clients they do not believe or with whom they do not personally agree.

however, are all models of teaching and not practicing. Seldom are competent performances of lawyering skills used in law school.²² Demonstrations are not even presented by guest speakers in clinical classes.²³

In both traditional and in clinical courses, professors try to place students in the role of lawyers, but students are not given a model for competent lawyering performances.²⁴ Because students seldom see lawyers perform lawyering skills, it is hard for students to imagine how practicing lawyers actually handle problems. Unlike other forms of graduate education which require all students to enroll in practicums²⁵ to help bridge the gap²⁶ from theory to practice, legal education only offers clinical and externship electives to some of the students. In class discussions the law students learn how their professors think a practicing lawyer should handle certain legal issues, but the students often still wonder how real practicing lawyers would handle these issues. Many students believe that professors live (and think) in an ivory tower that differs from the world of daily law practice. In earlier days when apprenticeships were the route to becoming a lawyer, students learned the law by reading in law offices and by spending time with practicing lawyers. Even today, the process of learning through apprenticeships and mentors²⁷ remains intact despite the change to a university based system of legal education focused on the case method of instruction. Although law schools do an excellent job of teaching legal reasoning and writing, other lawyering skills are learned "on the job." Lack of sufficient real world contact is one of the great disenchantments with legal education for law students.

Despite its value to a legal education, the opportunity to see a lawyer work with clients and in court is seldom available to law students. Even in part-time and summer employment, students seldom have the opportunity to observe lawyers at work. Law student clerks (and many new associates) are hired to do legal research in the library. It is the associates who "second chair" trials and watch experienced lawyers conducting interviews, discovery, and negotiations, or arguing motions and appeals. A good apprenticeship experience is considered so critical that some law firms have created well structured mentor programs.²⁸

The Lecture-In-Disguise can accomplish part of the apprenticeship function in the classroom. Students can learn from watching professors perform as lawyers. They can see a model for performing lawyering skills. Professors can

22. Most performances are presented on videotape. Although the tapes may be in the library and assigned like readings for class, taped demonstrations generally are not critically analyzed to the same degree that appellate opinions are analyzed.

23. Most guest speakers in law classes want to talk about their experiences, rather than give a performance of skills. Students could learn much more from a demonstration than a lecture.

24. "Teaching from models is a controversial suggestion in legal pedagogy." Menkel-Meadow, *Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education*, 4 ANTIOCH L.J. 287, 293 (1986).

25. The practicum is an integral part of some forms of graduate education. Kilpatrick, Thompson, Jarrett & Anderson, *Social Work Education at the University of Georgia*, in *ANDRAGOGY IN ACTION* 243, 249 (M. Knowles ed. 1984).

26. Gee, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U.L. REV. 695.

27. Mentoring is common in many forms of adult development. Merriam, *Mentors and Protégés: A Critical Review of the Literature*, 1983 ADULT EDUC. Q. 161; L. DALOZ, *EFFECTIVE TEACHING AND MENTORING* (1986).

28. Harper, *Learning at the Knee*, A.B.A.J., Dec. 1985, 70, 71 (1985).

demonstrate more than the status quo of law practice;²⁹ professors can present models for improved lawyering that are seldom seen in practice.³⁰ In addition, professors can create experiences which trigger discussions of important professional responsibility issues and demonstrate situations which the students might strive to avoid in practice.

Of course, professors can do instructive and provocative demonstrations, which are multi-level, without trying to embed lectures within them. For example, last year in my negotiations class we demonstrated strategy implementation, offered examples of demeanor, suggested tactics to guard against, and lead to a lively discussion of professional responsibility. A colleague³¹ and I videotaped ourselves doing the Ugli Orange negotiation, a variation of the familiar negotiation between two sisters over an orange.³² In our negotiation, two corporations, with a history of bad relations between them, each want Ugli oranges. Both corporations need the year's total crop of such oranges for humanitarian, yet commercial, purposes. They are negotiating over which of the companies should purchase the supply of oranges from a third party grower. One corporation needs only the rinds and the other needs only the juice, but neither side knows that the other needs only part of the oranges. When students do this negotiation, one side usually inadvertently mentions needing only the rinds or juice. The other student then typically reveals that they only need the other part of the orange. After this reciprocal disclosure, the students quickly reach an agreement to share the oranges and to contribute equally to the purchase price. Both students are satisfied with this "win-win" solution.

After the students completed their negotiation, we played the videotape of our negotiation. In addition to demonstrating general strategies of negotiation, we wanted to highlight the tactic of nondisclosure of information and to set the stage for a discussion of the ethics of such a tactic. In my role as a negotiator, when I learned that my opponent only wanted the oranges for the juice, I did not voluntarily disclose that I only wanted the rinds. I said that the oranges would be less valuable to me if I could not have the juice too. We reached an agreement, but I paid less than my opponent, justifying my lesser contribution on the fact that I did not get the benefit of the whole orange. In our demonstration, students saw how a negotiator might try to appear cooperative, still remain very competitive, and even lie to them. Needless to say, we had a lively discussion on negotiation ethics³³ and how to protect yourself from nondisclosures.

29. Professors try to teach "new" norms, values, and practices." Menkel-Meadow, *supra* note 24, at 289.

30. Interviews by lawyers in practice are not as client centered as the method of interviewing taught in law schools by using BINDER & PRICE, *supra* note 13.

31. Sociology Professor David Chandler and I team-teach a Negotiation & Mediation class where we have videotaped ourselves negotiating. Although these tapes are not of as high a quality as commercially prepared tapes, our tapes have the advantage that the students have the actors in the room to question them about what they did on the tape. I do not always feel good about my performance. But since I always critique student performances, it seems fair that they should be able to critique mine.

32. Two sisters want the same orange and they do not realize that one wants the rind and the other wants the juice. S. GOLDBERG, E. GREEN, & F. SANDER, DISPUTE RESOLUTION 19-20 (1985).

33. This demonstration was done in one of the early classes of the semester. Throughout the rest of the semester, the nondisclosure tactic and other competitive bargaining tactics were labeled "The John Barkai" style of negotiating. I tried to disown the tactic, but I was surprised at how strongly the label stuck. I raise this point to emphasize how strong the learning can be from a professor demonstration.

In addition to strategies and tactics, the Lecture-In-Disguise can effectively demonstrate a variety of attitudes and demeanors that can be used when conducting lawyering skills. For example, attitude³⁴ and demeanor are hard to describe, but easy to observe.³⁵ These elements of lawyering performances are largely nonverbal and lack precise descriptions for people who are not trained in psychology. If after a simulated witness examination, a student received the feedback that he needed to appear more confident, he might not know what to do differently.³⁶ However, watching an experienced professor conduct a witness examination with confidence, creates for the student a model of a confident witness examiner. Without the demonstration, the student might have much greater difficulty understanding what confidence looked like in this context. Furthermore, the students can learn about these attitudinal dimensions of performance without explicit discussions about them.

IV. ADVANTAGES OF THE LECTURE-IN-DISGUISE

The advantages of using the Lecture-In-Disguise fall into three general areas: 1) creating a good learning atmosphere, 2) presenting material on several different levels, and 3) using observational learning methods. First, the Lecture-In-Disguise creates a positive classroom atmosphere which is conducive to learning. The lively, unique, and entertaining aspects of the Lecture-In-Disguise attract and hold the students' attention, and, of course, attention of the students is necessary for learning. In addition to facilitating attention, the Lecture-In-Disguise offers an alternative format for presenting material. Learning theorists say that some students learn better from certain types of presentations than others.³⁷ Furthermore, students will appreciate a variety in the form of presentation.³⁸ The Lecture-In-Disguise makes for an interesting class, and interesting teaching is effective teaching.³⁹ Every professor can use some of the positive "Dr. Fox effects" for a more dramatic presentation of class material.⁴⁰

34. "Presence is the most important quality in the lawyer's part. Presence is both attitude and technique, and both can be learned." S. GOLDBERG, *THE FIRST TRIAL* 11 (1982).

35. In cross-examination, it is usually necessary to make it clear to the witness that you are in charge. Your tone and pace should be somewhere in between friendly and inquiring, on the one hand, and hostile and aggressive, on the other. Obviously, these gradations are easier to demonstrate than to express in writing. For this reason, you should watch a good trial lawyer doing both direct and cross.

L. PACKEL & D. SPINA, *TRIAL ADVOCACY: A SYSTEMATIC APPROACH* 92 (1984).

36. If you were a student, would you know how to implement the following advice? "[Y]our attitude on cross should be gentle yet firm." P. BERGMAN, *TRIAL ADVOCACY IN A NUTSHELL* 244 (1979). When commenting on effective advocacy it has been said that a lawyer "must project sincerity and dedication." R. ARON, J. FAST, & R. KLEIN, *TRIAL COMMUNICATION SKILLS* 354 (1986). If a student does not appear sincere and dedicated, what specific changes does the student need to make?

37. R. KOZMA, L. BELLE & G. WILLIAMS, *INSTRUCTIONAL TECHNIQUES IN HIGHER EDUCATION* 82-93 (1978).

38. "Vary the pace and type of instructional activities in a course." R. Wilson, *Having an Interesting Style of Presentation*, *supra* note 18, Teaching Improvement Packet No. 18, at 2.

39. "Scholarship must be accurate, whether it is interesting or not. But teaching must be interesting, even if it is not 100 percent accurate." G. HIGHER, *THE ART OF TEACHING* 219 (1950).

40. In a famous experiment focused on teaching styles, an actor, Dr. Fox, delivered a lecture to experienced educators in a charismatic style but with little substantive content. These professional educators were "seduced" into an illusion of having learned even though no real substantive content was presented. Naftulin, Ware, & Donnelly, *The Dr. Fox Lecture: A Paradigm of Educational Seduction*, 48 J. MED. EDUC. 630 (1973). The point is not that professors can use excellent lecture styles to hide lack of content,

The Lecture-In-Disguise makes the class more interesting from the professor's perspective. Because the professor interacts with an experienced professor rather than a novice student, the class is more challenging. If the disguises are outlined, but not fully scripted, the professors are challenged to be creative.⁴¹ The performance also is fun for most professors. This type of interaction generates enthusiasm between the professors, and when the professors are enthusiastic the students are more attentive and motivated. Finally, the Lecture-In-Disguise also allows both professors to be a continuous part of the teaching action.⁴²

A second advantage of the Lecture-In-Disguise is that all students constantly are challenged. Because students learn at different rates,⁴³ all teachers face the question of what is the rate at which they should present the subject.⁴⁴ If the pace matches the abilities of the "C" students, the "A" students may be bored. If the pace challenges the "A" students, the "C" students will be lost. Therefore, many teachers cover basic concepts at a slower rate so that all students can learn them, and then present more difficult material for the quicker students, realizing that the weaker students may not be able to keep up. Because three levels of knowledge are available in the Lecture-In-Disguise, it offers a rich mixture which allows all students to work to their maximum capacity. For example, a weaker student may only understand part of the content presented and some of the skill demonstration.⁴⁵ The weaker students can learn some aspects consciously and perhaps learn other aspects at an unconscious level.⁴⁶ The brightest students consciously will learn on all three levels. None of the students needs to feel lost on the complexity or bored by the simplicity.

The final advantage of the Lecture-In-Disguise is that it uses observational learning,⁴⁷ a type of learning that is not usually associated with law schools.

but rather that "a more dramatic stage presence can enhance student satisfaction with the learning process." *Id.* at 635. Most would agree that Dr. Fox's lectures would not impress regular students. "Dr. Fox could not get away with this seductive trick day after day in the same class." ERICKSEN, *supra* note 7, at 29.

41. This challenge to the professors to be creative on the spot is similar to the challenge traditionally posed to the students to think on their feet.

42. One difficulty with team teaching is that one professor often dominates the discussion while the other waits in the wings. Because professors normally work in front of the classroom alone, they are not very good at sharing the stage.

43. "Students learn a subject at different rates and with strikingly different levels of completeness." LOWMAN, *supra* note 2, at 3.

44. "Finding the appropriate depth of presentation for a group whose members differ significantly in ability is one of the greatest challenges in giving fine lectures." *Id.* at 104, n. 2.

45. Professors seldom have any reliable feedback on how much each student is understanding.

46. All students may learn some of the material at the unconscious level. Even if the students do not understand what they see or do not even recognize that they are seeing it, they will still learn from the experience. When they are asked to perform the skill, they probably will use the models presented by the professors.

I use this modeling concept another way in interviewing simulations. Students are given the facts for client roles in the form of transcripts of good interviews. For example, see the transcript of *Williams v. Hanson Lumber, D. BINDER & S. PRICE, INSTRUCTOR'S MANUAL FOR LEGAL INTERVIEWING AND COUNSELING: 73-77 (1979)*.

47. "One way to learn is through watching other people behave, and in this way we can acquire habits, skills, and knowledge without having to directly experience the consequences of every single action." M. HOWE, *THE PSYCHOLOGY OF HUMAN LEARNING* 129 (1980). "Virtually all social scientists have acknowledged that attitudes, values, and behavior of any individual may be developed, at least in part, through observational learning. Research studies have shown that simple observation of others can be very effective in changing widely varied aspects of the behavior of children or adults." S. LOWERY & M. DEFLEUR, *MILESTONES IN MASS COMMUNICATION RESEARCH* 304 (1983).

Observational learning is a well recognized theory of learning, according to which people can learn new behavior simply by watching other people.⁴⁸ The learners later can do what they have seen other people do. For example, it could be said that all law professors learned to teach by watching their law professors.⁴⁹ Such learning by example is referred to by many names including modeling,⁵⁰ imitation, copying, observational learning, social learning, vicarious learning, identification, internalization, introjection, incorporation, social facilitation, contagion, and role taking. Learning by watching is probably the most widely used learning method in the world. Every child learns about life in this manner.⁵¹

Much of the research on observational learning has centered on negative behavior in young children.⁵² The most popularly known such research examined social learning of aggression. Albert Bandura conducted many experimental investigations of observational learning and wrote extensively about what is called "social learning theory."⁵³ This research is often used in the debate on whether children who watch violence on television are more likely to commit violent acts.⁵⁴

Nothing about observation learning theory suggests that such learning is limited to negative behavior or that it is limited to children.⁵⁵ The theory is directed at learning any novel behavior. As such, the theory assists in explaining and offers

48. "[T]he teacher behaves in ways that he wants the learner to imitate." M. KNOWLES, *THE ADULT LEARNER: A NEGLECTED SPECIES* 87 (1978).

Law professors may be especially good as models because "models who are rewarding, prestigious, or competent, who possess high status, and who have control over rewarding resources are more readily imitated than are models who lack these qualities." A. BANDURA & R. WALTERS, *SOCIAL LEARNING AND PERSONALITY DEVELOPMENT* 107 (1963).

49. Almost no university professor has a background in educational theory. "Many teachers know little about teaching." Christensen, *Foreward* to *ART AND CRAFT OF TEACHING* ix (M. Gullette ed. 1982). "Professors are trained only as scholars and then thrust in front of the classroom to play the role of teacher." Fraher, *Learning a New Art: Suggestions for Beginning Teachers*, in *ART AND CRAFT OF TEACHING*, *supra* at 116.

We have all learned to teach by watching our teachers. Fortunately, we have all had some excellent teachers. Hopefully, we are modeling the best we have seen. The belief that "teachers learn to teach best through apprenticeship-like experience . . . encourages the novice to model the master teacher." D. CRUICKSHANK, *REFLECTIVE TEACHING* 5 (1987).

50. "'Model' refers to the person whose behavior is observed and subsequently incorporated by the learner. 'Modeling' refers to the performance of the model of the behavior observed by the learner." Howe, *supra* note 47, at 134.

51. *Id.* at 141-48.

52. Albert Bandura conducted many experimental investigations of human learning through observation at Stanford University. Most of these experiments examined social learning of aggression in young children. Aggressive responses tend to predominate among the activities measured in experiments on observation learning. "[A]ggressive actions are easy to discern and convenient to measure objectively." *Id.* at 130.

53. BANDURA & WALTERS, *supra* note 48; A. BANDURA, *SOCIAL LEARNING THEORY* (1977) (hereinafter BANDURA).

54. "According to the observational learning model, children learn to behave aggressively from watching violent actors on television the same way that they learn cognitive and social skills from watching parent, sibling peers, and others." LOWERY & DEFLEUR, *supra* note 47, at 361. "In 1972, the U.S. Surgeon General Jesse Steinfeld issued a statement correlating aggressive behavior in children with the watching of violence on television." Honolulu Star-Bulletin, December 21, 1987, at B-1, col. 3.

55. Adult education has been referred to as andragogy as contrasted to pedagogy or child learning. Andragogy is derived by substituting the Greek stem *andr*, meaning adult for the stem *paid*, meaning child, in the term pedagogy. KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION*, 37 (1970). An excellent explanation of andragogy in legal education is found in Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).

guidance in structuring the Lecture-In-Disguise of lawyering skills that are new to law students.

Three factors that enhance observational learning are attention, retention, and motivation. These factors all exist or can be facilitated with the Lecture-In-Disguise. First, the learner must pay attention to the person demonstrating the behavior.⁵⁶ Hopefully, students pay attention to the professors in class, but of course, the attention of students does wander. Because the Lecture-In-Disguise is so novel, however, students pay great attention to it. Additionally, stimulus movement also attracts attention.⁵⁷ Therefore professors attract attention when they move around the classroom to different physical positions during a Lecture-In-Disguise.

Second, retention of the observation in memory, either as a visual image or in words, is necessary for learning.⁵⁸ Of course, students watching a Lecture-In-Disguise will have a visual image of the demonstration. The professors also can improve the chances that the students will notice and remember the desired behavior, if the professors label⁵⁹ the behavior by referring to an outline written on the board.⁶⁰

Motivation is the final factor that enhances observational learning.⁶¹ Law students have at least a dual motivation for remembering the Lecture-In-Disguise. First, they are seeing a lawyering skill that they want to learn to perform because they know that the skill will be useful to them after law school. Additionally, proficiency in the demonstrated skill may be critical to handling a case in a clinic, or it might affect their grade in the course.

Even if the Lecture-In-Disguise brings observational learning into the law schools for the first time, this type of learning is not unique to legal education. Observational learning is at the heart of the apprenticeship system of legal education. Apprenticeships were the formal system of legal education before the university-based law school was started, and apprenticeships still exist even today as an informal system of legal education after law school. Observational learning by adults is the process of modeling the behavior of an expert. This behavior is the traditional method for teaching and learning lawyering skills. New lawyers always have watched and learned from experienced lawyers. Apprentices, student law clerks, and recent law graduates all learn lawyering by watching experienced lawyers. Even with clinical legal education, trial practice classes, and National Institute of Trial Advocacy courses, most lawyers still learn by modeling other lawyers. Modeling teaches by rote, and rote learning is discouraged in law school in favor of learning the analytic process of "thinking like a lawyer." However, at early stages of the learning process, rote learning may be the most effective technique. When initially learning a skill, especially one that has never been seen before, students are usually overwhelmed by the seemingly unlimited num-

56. BANDURA, *supra* note 53, at 22.

57. BERGAN & DUNN, *PSYCHOLOGY AND EDUCATION: A SCIENCE FOR INSTRUCTION* 233 (1976).

58. BANDURA, *supra* note 53, at 25-26.

59. "The habit of verbalizing perceived events is a kind of strategy that enables mature people to learn more than less able learners." HOWE, *supra* note 47, at 137.

60. "Outline your lecture on the blackboard as it develops." R. Wilson, *Giving Lectures that Are Easy to Outline*, *supra* note 18, Teaching Improvement Packets No. 6, at 3.

61. BANDURA, *supra* note 53, at 28.

ber of options available. Contrary to the old adage to always "be yourself,"⁶² observational learning theory might suggest that students first should learn to copy someone else's effective style of presentation, and then later to modify and adapt that style to their own personality.

V. IMPLEMENTATION OF THE LECTURE-IN-DISGUISE

A. *The First Class of the Semester*

The first class of the semester is an excellent time to use the Lecture-In-Disguise. It quickly communicates the message, "This class will be different, relevant, and fun. The professors care about my learning, and they have skills that I want to learn. Enroll in this class!" When students see a Lecture-In-Disguise for the first time, their enthusiasm and motivation to learn is high. The students believe that the innovative teaching shows that the professors are genuinely interested in their education. Because the students also see that the professors can perform lawyering skills that they teach, the performance enhances the professors' credibility. Finally, the Lecture-In-Disguise assists in recruiting students for elective classes.⁶³

I use a witness examination in the first class for several reasons. First, witness examination is exciting and generates student enthusiasm. Most students have had no personal experience with this skill. Although every student has negotiated or been interviewed, students come to law school with only a television or motion picture model of courtroom skills. To students, the courtroom is the lawyer's domain; cross examination is its centerpiece. No matter how much law schools begin to teach about alternative dispute resolution, trials seem to hold a special place in the idealized version of the American justice system.

This Lecture-In-Disguise, like most, begins without any notice that the professors are slipping into role. One professor says, "As my first witness I call Professor X" and the other professor walks over and sits down. All students quickly realize that a witness examination is about to begin, but they do not know the topic. The professors have planned lecture topics to include a course overview, a short lecture on witness examination, and classroom assignment. For the students, it is a hidden agenda.⁶⁴

On direct examination, the professor playing the role of the witness 1) answers questions asked by the other professor, 2) offers his philosophy of the class, 3) explains his expectations for the class, 4) presents an explanation of the principles of direct examination, 5) comments on the form of the examiner's questions, and 6) gives an in-class assignment. The syllabus is introduced into evidence as

62. Most trial practice books suggest "Be yourself." Hanley, *The Importance of Being Yourself*, in D. RUMSEY, *MASTER ADVOCATES' HANDBOOK* 9 (1986).

63. Students often "shop around" by attending the first meeting of several classes and use the first class to decide whether or not to enroll in the class. J. Wolcowitz, *The First Day of Class*, in *ART AND CRAFT OF TEACHING*, *supra* note 49, at 10, 13.

64. At some class during the semester, I contrast open agendas with closed agendas, and then contrast disclosed agendas with hidden agendas. Students are asked to vote on which type of agenda they would like to have for that class, and I then conduct the class according to their vote.

an exhibit and passed out to the students.⁶⁵ On cross examination,⁶⁶ through leading questions, the professor playing the role of the witness examiner gives his overview of the class, 2) explains the principles of cross examination, 3) comments on the form of his questions, and 4) discusses other topics. The texts for the course are also introduced into evidence as exhibits.⁶⁷

B. Making It Active

One disadvantage of the Lecture-In-Disguise is that it is not experiential. Actually, it is an active learning experience for the professors, but not for the students. The Lecture-In-Disguise can be made more active⁶⁸ for the students by giving them an assignment. For example, during a witness examination demonstration, the students can be told that after the professors finish their demonstration, each student will be required to ask one direct and one cross examination question about the course. When the students ask their questions, one professor critiques the form of the question, and the other one then answers the question.

C. Visual Aids

The Lecture-In-Disguise moves very quickly for the students because it covers novel information at several levels simultaneously. Even when students see and hear the Lecture-In-Disguise taking place right in front of them, they will not understand everything that they are experiencing. If they have a structure available to focus their attention, they can learn more from the demonstration.

All information comes to people through their senses. Even though the majority of our communication is visual, most of classroom education is oral. Any successful courtroom lawyer understands the importance of demonstrative evidence for visual learning.⁶⁹ Visual aids can be as important in the classroom as in the courtroom.

The learning from the Lecture-In-Disguise can be greatly enhanced by using

65. Although evidence is a prerequisite for this class, most students have never seen anyone actually lay a foundation for the introduction of physical evidence. The demonstration is novel, and the students are very interested in this particular exhibit (their syllabus). Passing out the exhibit during the witness examination creates the opportunity for a later discussion contrasting the advantage of immediately publishing exhibits to the jury, with the disadvantage of losing the jury's attention while the exhibit circulates.

66. I have always done this simulation with two professors. At the end of direct examination, the professor playing the role of the lawyer walks away from the podium and pretends to come back as the cross examiner. A little humor can be added by fixing your hair or changing jackets.

67. In clinical courses, students often show great delight in cross examination structured along the following lines:

- Q. The course you are talking about is offered for credit at this law school, isn't that correct?
- Q. And this school is accredited by the American Bar Association, right?
- Q. Professors at this school generally use the case method of instruction?
- Q. As a professor teaching this course, you are familiar, aren't you, with what has been previously admitted into evidence as Professor's exhibits numbers two and three?
- Q. Those exhibits are the assigned texts for this course, right?
- Q. Now Professor, isn't it true that there is not a single appellate case in either of these assigned texts?

68. Active participation will improve the "quality and amount of information retrieved from long term memory." ERICKSEN, *supra* note 7, at 57.

69. MAUET, *supra* note 17, at 177-78.

an outline on the board to track the simulation in progress.⁷⁰ In addition to playing a role in the simulation, one of the professors checks the words in the outline as the topics are covered.⁷¹ The effect is like producing a live annotation to a transcript.⁷²

D. Who Else Uses the Lecture-In-Disguise

The Lecture-In-Disguise appears to be both effective and unique. It is definitely effective, but it is only unique in law school. The Lecture-In-Disguise is common in daily life.

Every day we receive Lectures-In-Disguise from radio, television, magazines, and books. In advertising the Lecture-In-Disguise is called the "slice-of-life" technique.⁷³ It was pioneered by the Procter & Gamble Company in the 1930's.⁷⁴

70. I have used the following outline while doing a Lecture-In-Disguise of active listening.

- Active listening
 - Content
 - Feelings
- Roadblocks
 - Reassurance
 - Advice
 - Questions
- Evaluating the Response
 - Form
 - Accuracy
 - Intensity
- Avoid Parroting
- Do Not Answer Questions (the first time)
- It Self Corrects

71. I first saw a variation of this technique when Professor James Jeans was teaching cross examination at a National Institute of Trial Advocacy seminar. A student was having difficulty asking leading questions. Professor Jeans wrote "non-leading" and "leading" on the blackboard. After each question, he put a check mark next to the appropriate word. Everyone then seemed to understand the difference between leading and non-leading questions.

72. In my Negotiation & Mediation class I use the annotation method to offer my explanation of what is happening in a simulated mediation.

73. "[The slice-of-life] is a dramatic treatment of a supposed real-life situation in which product benefits are openly discussed. Although fictional, the short vignettes are supposed to give the appearance of real life." CONRAD, *THE TV COMMERCIAL* 27 (1983). See also PECK, *ANATOMY OF LOCAL RADIO-TV COPY* 64 (1976). For examples of recent information on this technique, [cf2see *The Hottest Markets*, *ADVERTISING AGE*, April 6, 1987; *Lever Fires Up Local 'Display' for New Wisk*, *ADVERTISING AGE*, April 13, 1987, at 3; *Procter & Gamble Gets Hip*, *ADVERTISING AGE*, June 8, 1987; *International Section*, *ADVERTISING AGE*, June 29, 1987, at 48.

"Despite the fact that the technique is derided as "phony, contrived story-telling," Harry McMahan writes, "The 'slice-of-life' remains the single most successful vehicle for communication and persuasion that this business has come up with in its first 23 years of success and failure." McMahan, *Slice-of-Life Ads May Not Win Love or Prizes, but They Work*, *ADVERTISING AGE*, July 15, 1970, at 84, cited in H. BALDWIN, *CREATING EFFECTIVE TV COMMERCIALS* 75-76 (1982).

74. Procter & Gamble products were the first products to be marketed using the "slice-of-life" technique.

Oxydol was helping to create a new format for print advertisements: the "slice-of-life" situation. For example, a housewife learns from her grocer that she need no longer suffer from backaches after laundering. He tells her, "Oxydol makes everything easier." The scene shifts to the dinner table and her husband says, "A big meal like this on wash day? And we're going to the movies? Say, where's that old backache?" His wife responds with a happy smile, "I've found a new soap called Oxydol, dear. No more backaches for me!"

In a Crisco advertisement, a gentle, elderly Mrs. Paul comes into a distraught woman's kitchen, a can of Crisco in her hand, to show the housewife how to make "a light and digestible pie" that will delight her husband's boss when he comes to dinner.

O. SCHISGALL, *EYES ON TOMORROW: THE EVOLUTION OF PROCTER & GAMBLE* 125 (1981).

Millions of dollars in advertising are committed to the lecture-in-disguise technique, suggesting that many American businesses think the technique is effective.⁷⁵ In simulated situations, actors discuss the benefits of products with their family, friends, neighbors, or strangers. They discuss everything from "ring-around-the-collar" in laundromats to instant coffee in America's finest restaurants. Some books are even written in the Lecture-In-Disguise style.⁷⁶

E. Going Solo

The Lecture-In-Disguise usually requires two people. If clinical courses have several faculty members and staff attorneys, they easily can structure a Lecture-In-Disguise. Even if only one professor is teaching the course, a second professor can be invited in to assist with the simulation. If the Lecture-In-Disguise was carefully scripted, a student might be able to play one of the roles, but that would be difficult.⁷⁷

A more technically complex solution is to do the Lecture-In-Disguise by yourself by using a video recorder. Before class, you video yourself in one role. You perform the other role live in class. By using the remote control functions on the video recorder, the live simulation can be synchronized with the video tape.⁷⁸

I use another type of solo Lecture-In-Disguise when I teach active listening. I read statements aloud, and ask students to make an active listening response. My purpose is to get students to make proper active listening responses, with the help of my feedback, for the whole class to hear. The Lecture-In-Disguise aspect is present because some of the statements I ask students to active listen are designed to teach about active listening.⁷⁹ For example, a student would be

75. "[Slice-of-life advertisements] must be effective or they would be dropped." CONRAD, *supra* note 73, at 27.

76. For example, the popular "One-Minute Manager" series of books is one of the best known examples of this style. K. BLANCHARD & S. JOHNSON, *THE ONE MINUTE MANAGER* (1981); S. JOHNSON & L. WILSON, *THE ONE MINUTE SALES PERSON* (1984); K. BLANCHARD & R. LORBER, *PUTTING THE ONE MINUTE MANAGER TO WORK* (1984); S. JOHNSON, *ONE MINUTE FOR MYSELF* (1985). Another example is F. AGARDY, *HOW TO READ FASTER AND BETTER* 84-91 (1981) (reading articles about how to read faster as practice material for speed reading).

77. I use one student in the witness examination. I give the student a card that has on it a leading question that is going to be asked on direct examination. The student is told to say, "Objection. Leading question," after the question is asked. As a backup measure, I look directly at the student just before the objection should be made. After the objection, the witness examiner says, "I will rephrase the question" and asks another question.

78. I once did such a video simulation with a co-professor who had to be out of the state during the first class meeting. We videotaped his part; I did mine live.

At the 1988 Association of American Law Schools' Conference on Clinical Legal Education meeting in Bloomington, Indiana, Graham Strong, from the U.C.L.A. Law School, demonstrated such a solo Lecture-In-Disguise using videotape.

Videotaped Lectures-In-Disguise can be very useful. "Videotapes represent a powerful means of accomplishing modeling effects in the classroom." Williams, *Current Issues in Classroom Behavior Management*, in *HISTORICAL FOUNDATIONS OF EDUCATIONAL PSYCHOLOGY* 279, 301 (J. Glover & R. Ronning ed. 1987).

79. I consider active listening to include both reflecting content, which some people consider to be a separate skill of paraphrasing, and reflecting feelings, which is the more traditional active listening. A sample active listening statements for content is, "Active listening is one of the best ways I know of to improve a lawyer's interviewing and counseling skills."

asked to active listen the statement, "Sometimes I am worried that students won't try to use active listening because they don't feel comfortable using it."⁸⁰

VI. CONCLUSION

During the first three hundred years of American legal education, teaching methodologies slowly evolved from the apprenticeship system,⁸¹ to lectures at universities,⁸² and finally to the pervasive case method of Christopher Columbus Langdell.⁸³ The past few decades have seen a great deal of experimentation with innovative classroom teaching. But despite the growth of clinics and other innovative forms of legal education, law students have little contact with the world of practice. The Lecture-In-Disguise is a teaching technique, based upon sound learning theory, that brings some of the best parts of the apprenticeship system into the classroom.

APPENDIX

In a classroom of a clinical course at the University of Hawaii Law School, the following witness examination took place:

Direct Examination

Q. Please state your name for the record.

A. John Barkai.

Q. Where do you work Mr. Barkai?

A. I am a Professor of Law at the William S. Richardson School of Law at the University of Hawaii.

Q. Why are you here today?

A. To help you explain this course.

80. When a professor frequently shifts between playing a role in a simulation and offering critiques of student performances, in a sense the professor wears two hats. At times, it is difficult for the students to understand which person, the person in role or the critiquer, is speaking. I try to remove this confusion by literally switching hats. I wear a baseball cap when I am in the simulation role, and I take the cap off when I speak as the professor. Inevitably the hat switching does get confusing. I wear it at the wrong time, and students laugh. I think the laughter is good because it breaks some of the tension the students have while waiting to perform in class and be critiqued.

Performing in front of one's peers creates tension. I recall teaching at the clinical conference, where other professors were acting as my class. I moved down the row of students (professors), asking questions to one person at a time. During the later debriefing, one professor said that she was so nervous as she saw the questioning move down the row towards her, that she could not concentrate enough to answer my question, even though she also taught this subject. If even knowledgeable professors can become this anxious, students are likely to have even greater anxiety which impairs their in-class performance.

81. During the Colonial period in America, "preparation [for the bar] was through apprenticeships in the offices of members of the bar, for which privilege the apprentice paid a fee." A. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 19 (1953).

82. In America, the first chair in law was founded in 1779 at William and Mary College. *Id.* at 23. The first instruction in law at universities was "little more than an expanded form of office apprenticeship training." J. HURST, *THE GROWTH OF AMERICAN LAW* 260 (1950).

83. Chase, *American Legal Education Since 1855: The Case of the Missing Modern*, 30 N.Y.L.SCH. L. REV. 519 (1985).

- Q. Is there anything else that you are doing?
- A. I also am helping you to demonstrate the proper form for direct and cross examination of a witness.
- Q. Before I ask you any more about the course, I want to ask you about your background.⁸⁴ How long have you been a professor?
- A. 15 years.
- Q. How many clinical courses have you taught?
(Examination continues on clinical experience)⁸⁵
- * * *
- Q. Your Honor, I offer the witness as an expert on clinical legal education.
Do you have an opinion on what should be the content of a clinical course?
- A. Yes.
- Q. What is that opinion?⁸⁶
- * * *
- Q. Let's talk about direct examination.⁸⁷ What is the purpose of direct examination?
- A. The witness tells his story on direct. The lawyer tries to stay in the background and to help the witness appear credible.
- Q. What kind of questions are appropriate for direct?
- A. Non-leading questions.
- Q. What do you mean by "non-leading"?
- A. Questions just like you are asking me. Questions that do not suggest the answer. Questions that start with "How, what, when, where," and "why." Of course the students also should be paying attention to the nonverbal parts of your examination, your tone, pace, attitude, and where you stand in the courtroom.
- Q. Back to forms of questions. Isn't it true that leading questions are objectionable on direct examination?
- Voice from the audience:⁸⁸ Objection. Leading question.
- Q. I will withdraw the question. Professor Barkai, why is it important that these students know about direct and cross examination?
- A. They will be using direct and cross examination in the cases where they represent real clients in this course.
- Q. Well, that is in the future. Do they have any more immediate need for these skills?
- A. When you and I finish this demonstration, each student will be required to ask one direct examination and one cross examination question about the course, and we will critique the form of their questions.

84. Point to the part of the outline on the board that reads, "Accredit the witness."

85. Lay a foundation to qualify the witness as an expert in clinical legal education. Questions include topics about years of teaching, types of cases, attendance at conferences, teaching at conference, and publications about clinical education.

86. Point to "Expert Opinion."

87. Point to "Topical Sentences."

88. Before class, a student was asked to object at this point.

Q. Now I would like to ask you some questions about what the students will do in the classroom this semester. What are they assigned to prepare for the next class meeting?

* * *

Q. Let me show you what has been marked as Professors' Exhibit No. 1, for identification purposes.⁸⁹ Can you recognize it?

A. Yes.

Q. What is it?

A. It is the syllabus for this course.

Q. How do you know that?

A. I helped you to write it.

Q. Is it in the same condition as when it was written?

A. Yes it is. This is a perfect copy of the one I typed on my computer.

Q. Your Honor, I offer Professors' Exhibit No. 1 into evidence and ask to publish it to the jury of students.

* * *

Q. Is there anything else you would like to add?⁹⁰

A. No.

Q. No further questions your Honor.

Cross Examination

Q.⁹¹ This is cross examination isn't it?

A. Yes.

Q. And if I do this properly, my questions should be leading, shouldn't they?

A. Yes.

Q. That means that I should try to limit you to "Yes" and "No" answers.

A. Cross examination is generally more difficult for students.

Q. Move to strike your Honor. The answer was non-responsive. My question was, cross examination means that I should try to limit you to "Yes" and "No" answers. Right?

A. That's right.

Q. One way to ensure that a question is leading is to use the phrase "isn't it true," isn't that true?

A. Yes.

Q. But after a while, you can ask leading questions without using the phrase?

A. Yes, that's true.

Q. You don't teach this course by yourself do you?

A. No.

89. Point to "Introduction of Evidence."

90. Although this is not a very good direct examination question because it turns control of the examination over to the witness, the question is good in the Lecture-In-Disguise because the professor playing the role of witness gets to say anything that was inadvertently left out.

91. Usually I just walk away from the area I asked the direct question from and walk back again. Sometimes I also recomb my hair, change jackets, or do something else to indicate that I am a different person from the one who asked the direct examination.

- Q. You co-teach it with me, don't you?
A. Yes.
Q. Next I would like to ask some questions about what we are going to teach. The students will represent real clients in this course, won't they.
A. Yes they will.
Q. So they will learn about practice?
A. That is very true.
Q. And they will also learn about theory and professional responsibility in the classroom, right?
A. Absolutely.

* * *

- Q. Just one final topic professor. Don't you usually oppose the lecture method for teaching because the students are not active learners during the lecture?
A. Yes, that's true.
Q. Isn't it true that you have said that the lecture method went out of style when the printing press was invented?⁹²
A. Well, I might have said something like that once or twice, but it was really meant to be a joke.
Q. Well Professor, isn't it true that you just joined in a Lecture-In-Disguise?
A. Yes, yes, I can't stand it any more (sobbing).

92. "[L]ectures became obsolete when the printing press was invented." H. SKILLING, *DO YOU TEACH?* 48 (1969).